Supreme Court, U.S.
FILED
JUL 16 1990
JOSEPH F. SPANIOL, JR.
CLERK

(3)

NO. 89-1915

IN THE
SUPREME COURT
OF THE
UNITED STATES

October Term, 1989

BRADLEY ARTHUR,

Petitioner,

v.

HILLSBOROUGH COUNTY BOARD
OF CRIMINAL JUSTICE,

Respondent.

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO CERTIORARI

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PETITIONER'S REPLY TO
RESPONDENT'S BRIEF IN
OPPOSITION TO CERTIORARI

The Respondent misunderstands the plain meaning of the decision below and misstates the plain holding of The Florida Star v. B.J.F., 530 So.2d 286 (Fla. 1988). This Court has jurisdiction to grant certiorari. This Court's decision in Howlett v. Rose, ___U.S.__ (June 12, 1990) makes the granting of certiorari and vacating of the decision below both appropriate and a result which is consistent with the Florida appellate court's stay of its mandate pending this Court's Howlett decision.

A. Jurisdiction

The Respondent suggests that after the Florida Second District Court of Appeal dismissed Petitioner's case citing Hill v. Dep't of Corrections, 513 So.2d 129 (Fla. 1987) and Howlett v. Rose, 537 So.2d 706 (Fla. 2nd DCA 1989), Petitioner should have sought to invoke the Florida Supreme Court's discretionary review jurisdiction, because Florida

Star said that the Florida Supreme Court had "jurisdiction under the Florida Constitution over any opinion that contains 'a statement or citation effectively establishing a point of law upon which the decision rests.'" Respondent's Brief in Opposition, p.5.

The Respondent failed to quote the Florida Star footnote which makes clear that the Florida Supreme Court had no jurisdiction in this case:

> This Court does not, however, have subject matter jurisdiction over a district court opinion that fails to expressly address a question of law, such as opinions issued without opinion or citation. Thus a district court decision rendered without opinion or citation constitutes a decision from the highest state court empowered to hear the cause, and appeal may be taken directly to the United States Supreme Court. Moreover, there can be no actual conflict discernible in an opinion containing only a citation to other case law unless one of the cases cited as controlling authority is pending before this court, or has been reversed on appeal

> or review, or receded from by this court, or unless the citation notes a contrary holding of another district court of this court.

The Florida Star v. B.J.F., 530 So.2d at 288, n.3 (emphasis supplied, citation omitted). The District Court of Appeal's citations to Hill v. Dep't of Corrections and Howlett v. Rose provided no basis for Florida Supreme Court jurisdiction, making direct review by this Court the appropriate route.

The Respondent's assertion that the Florida District Court of Appeal dismissed Petitioner's case for failure to file a supplemental brief addressing the effect of Hill and Howlett is equally disingenuous. Responding to the court's inquiry about the effect of Hill and Howlett, Petitioner asked that the court hold his appeal in abeyance, pending this Court's decision in Howlett v. Rose. Respondent's Appendix to Brief in Opposition to Certiorari, pp.16a-18a. The District Court of Appeal declined to do so, id. at 19a, and

then decided the appeal solely based on Howlett and its precursor, Hill. Id. at 20(a); Petitioner's App.1-2.

There is absolutely no doubt that the Florida District Court of Appeal decision below was strictly a re-application of its Howlett decision. Indeed, the District Court of Appeal decision to grant Petitioner's Motion to Stay the Mandate pending this Court's decision in Howlett (Petitioner's App.10) confirms the decision below was based on Howlett, not because, as Respondent says, Petitioner "disobeyed the court order to file a supplemental brief." Respondent's Brief in Opposition to Certiorari, p.6.

Since there was no jurisdiction in the Florida Supreme Court, and the decision below was squarely based upon Howlett v. Rose, there is no impediment to this Court's jurisdiction.

B. The Decision Below Was Not Decided On The Merits Of The §1983 Action

The Respondent states that the decision below was "on the merits" of Petitioner's §1983 action, and therefore the Howlett issue is not before this Court. Respondent's Brief in Opposition, pp.7-9.

That assertion is startling considering the opinion below. The simple citations to Hill and Howlett leave no doubt that sovereign immunity, not the merits, were the basis of the decision below. The merits of Petitioner's appeal from the trial court's entry of summary judgment were not decided by the District Court of Appeal, therefore the Respondent's claim to the contrary is completely erroneous.

This case is a replay of Howlett. It deserves the same treatment -- reversal and a remand for disposition on the merits.

CONCLUSION

The Respondent's arguments against jurisdiction are so devoid of merit that double costs should be ordered pursuant to Supreme Court Rule 43.7 once the Court grants certiorari and vacates the decision below in light of its June 12, 1990 decision in Howlett v. Rose.

Respectfully submitted,

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DATED: July 12, 1990.

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